

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

GENE HACKER,

Plaintiff,

v.

HOME DEPOT U.S.A., INC.,

Defendant.

CIVIL ACTION NO. 4:21-cv-668

NOTICE OF REMOVAL

Defendant Home Depot U.S.A., Inc. (“Home Depot”) files this Notice of Removal for purposes of removing this suit to the United States District Court for the Eastern District of Texas, Sherman Division, and states:

**I.
BACKGROUND**

On July 27, 2021, Plaintiff Gene Hacker (“Hacker”) filed an action styled *Gene Hacker v. Home Depot U.S.A., Inc.*, Cause No. CV21-00275, in the 235th Judicial District Court, Cooke County, Texas (the “State Court Action”). Hacker’s Original Petition (“Petition”) is his live pleading. In his Petition, Hacker pleaded causes of action for age discrimination, disability discrimination, and retaliation in violation of Chapter 21 of the Texas Labor Code. Petition § IV.

Home Depot was served with process on July 29, 2021 and filed its Answer on August 23, 2021. This Notice of Removal, together with all process, pleadings, and orders served on Home Depot or otherwise on file are being filed in this Court within thirty (30) days after the initial service of citation on Home Depot. The removal is therefore timely under 28 U.S.C. § 1446(b).

A copy of this Notice of Removal is also being filed with the Clerk of the State Court in which the State Court Action was filed.

**II.
VENUE**

Under 28 U.S.C. § 1441(a), venue of the removed action is proper in this Court as it is the district and division embracing the place where the State Court Action is pending.

**III.
GROUNDS FOR REMOVAL**

This Court has jurisdiction over the State Court Action pursuant to 28 U.S.C. § 1332 because it is a civil action between citizens of different states, and the amount in controversy exceeds the sum of \$75,000, exclusive of costs and interest. Complete diversity between the parties exists because, as described below: (1) Hacker is a citizen of the State of Texas; and (2) Home Depot is not a citizen of Texas.

At all times relevant to this suit, Hacker was a citizen of Texas. Petition § II. Home Depot is a foreign for-profit corporation. Home Depot was at the time the Petition was filed, and still is, incorporated in the State of Delaware. Its principal place of business at the time of the filing of this action was and is in the State of Georgia. Pursuant to 28 U.S.C. § 1332(c), “a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business.” For purposes of federal diversity jurisdiction, Home Depot is a citizen of the States of Delaware and Georgia. As such, Home Depot is not a citizen of the State of Texas.

Hacker alleges he is entitled to past earnings and benefits of at least \$55,000 per year and future earnings at that same rate for 10 years. Petition § VI. Hacker also seeks compensatory and punitive damages. *Id.* Accordingly, this is an action where the “matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of

different States.” 28 U.S.C. § 1332(a)(1). This Court therefore has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), and this action may be removed by Home Depot pursuant to 28 U.S.C. § 1441.

**IV.
INFORMATION REQUIRED BY LOCAL RULE 81**

Defendant provides the below information Pursuant to Local Rule CV-81.

(1) List of all parties in the case, their party type, and current status of the removed case:

Plaintiff: Gene Hacker

Defendant: Home Depot U.S.A., Inc.

The removed case is pending.

(2) Civil cover sheet and copy of the state court docket sheet; a copy of all pleadings from state court. See *Exhibit A*.¹

(3) List of attorneys involved:

Counsel for Plaintiff:

John E. Wall

Law Offices of John E. Wall, Jr.

jwall@jwall-law.com

(214) 887-0100

(214) 887-0173

Counsel for Defendant:

Kristin Snyder Higgins

Texas State Bar No. 24046880

kristin.higgins@ogletree.com

John Barcus

Texas State Bar No. 24036185

john.barcus@ogletree.com

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

8117 Preston Road, Suite 500

Dallas, Texas 75225

(214) 987-3800

(214) 987-3927 (Fax)

¹ Note: Defendant attempted in good faith to comply with the local rule's requirement to attach a certified copy of the docket sheet. Defendant requested the certified copy on August 23, 2021 after filing their Answer. Because of COVID-19, the state court is not allowing in-person pick up and would only mail documents requested. We understand that the certified copy will be sent to us. Having not received the certified copy by end of day on Friday, August 27, 2021, Defendant elected to attach a non-certified copy so as to ensure timely removal. Defendant will supplement with the certified copy as soon as it is received.

(4) Record of which parties requested a jury:

None

(5) Name and address of the court from which the case was removed:

235th Judicial District Court, Cooke County
Cooke County Courthouse
101 South Dixon
Gainesville, TX 76240

V.
CONCLUSION

Removal of this action is proper under 28 U.S.C. § 1441(a) and (b), since it is a civil action brought in a state court. The federal district courts have original jurisdiction under 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties.

WHEREFORE, Defendant gives notice that the action *Gene Hacker v. The Home Depot U.S.A., Inc.*, Cause No. CV21-00275, pending in the 235th Judicial District Court of Cooke County, Texas, is removed to this Court.

Respectfully submitted,

By: /s/ Kristin Snyder Higgins
KRISTIN SNYDER HIGGINS
Texas State Bar No. 24046880
kristin.higgins@ogletree.com
JOHN M. BARCUS
Texas Bar No. 24036185
john.barcus@ogletreedeakins.com

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
8117 Preston Road, Suite 500
Dallas, Texas 75225
(214) 987-3800 (Phone)
(214) 987-3927 (Fax)

**ATTORNEYS FOR DEFENDANT
HOME DEPOT U.S.A., INC.**

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of August 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Kristin Snyder Higgins
KRISTIN SNYDER HIGGINS

48192700.1